

MARIA DEL CARMEN GAGO SANTANA

FEBRUARY 21, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. FEIGHAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3960]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3960) for the relief of Maria del Carmen Gago Santana, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, for the purposes of the Immigration and Nationality Act, Maria del Carmen Gago Santana shall be deemed to have been born in Cuba.

PURPOSE OF THE BILL

The purpose of this bill, as amended, is to confer nonquota status on Maria del Carmen Gago Santana. As introduced, this bill would have granted permanent residence in the United States, and has been amended to place the beneficiary in a position to enter the United States under the provisions of the general immigration law.

GENERAL INFORMATION

The beneficiary of this bill is a 33-year-old native of Spain who is a citizen and resident of Cuba. Her father is deceased and her mother, a former permanent resident of the United States, resides in Cuba. The beneficiary has been residing in this country with her sister, a United States citizen.

A report from the Commissioner of Immigration and Naturalization, to the Chairman of the Committee on the Judiciary, dated May 27, 1955, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,  
IMMIGRATION AND NATURALIZATION SERVICE,  
Washington 25, D. C., May 27, 1955.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington 25, D. C.*

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 3960) for the relief of Maria Del Carmen Gago Santana, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y., office of this Service, which has custody of those files.

The bill would grant the beneficiary the status of a permanent resident of the United States as of the date of her last entry into the United States upon payment of the required visa fee. It also directs that one number be deducted from the appropriate immigration quota for the first year that such quota is available.

The beneficiary is chargeable to the quota of Spain.

Sincerely,

\_\_\_\_\_, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION  
SERVICE FILES RE MARIA DEL CARMEN GAGO SANTANA, BENEFICIARY OF  
H. R. 3960

Maria del Carmen Gago y Santana, also known as Carmina G. Santana, a native of Spain and a citizen of Cuba, was born December 6, 1921. She is unmarried and resides in Hollis, Queens, N. Y. She has not been employed in the United States. Prior to coming to the United States she was a free-lance writer for fashion and interior decorating magazines in Cuba. She claims assets consisting of \$800 in cash, \$1,000 in stocks and bonds, and \$2,000 in jewelry and personal belongings. She is supported by her mother, Maria del Carmen Santana, a former lawful permanent resident of the United States who is now residing in Cuba. The beneficiary's only other close relative is her sister, a United States citizen, who resides in Connecticut.

Miss Santana's only entry into the United States was at the port of New York on July 25, 1948, as a temporary visitor until October 25, 1948. Her application for extension of stay was denied and she was given until November 15, 1950, to effect her departure. Upon her failure to depart, deportation proceedings were instituted against her on May 25, 1951. A warrant of deportation was issued against the beneficiary and on appeal to the Board of Immigration Appeals the order of deportation was withdrawn and the beneficiary granted voluntary departure with deportation as an alternative. As the beneficiary failed to effect her departure on or before March 1, 1955, a warrant for her deportation was issued on March 2, 1955.

Miss Santana has also been the beneficiary of private bills H. R. 3920, 82d Congress, May 1, 1951 and H. R. 2487, 83d Congress, February 2, 1953, both of which failed of passage.

The committee received the following evidence in support of this bill:

MARIA DEL CARMEN GAGO SANTANA

H. R. 3960

This is a bill for the relief of the above-named alien.

Miss Santana came to the United States on July 25, 1948, to visit her sister, an American citizen. On August 13, she suffered an auto accident that forced her to remain in this country indefinitely. This resulted in the severance of her business ties in Cuba.

She sought to legalize her stay on the strength of the permanent residence of her mother, who had meantime been admitted to this country. This was unsuccessful because the immigration authorities decided that, since she was born in Spain, also the birthplace of her father, she was chargeable to the quota of that country, which is oversubscribed for decades to come.

This decision was adopted despite the fact that the alien's mother is a native-born Cuban; that immediately upon her birth she was registered as a native-born Cuban in the Cuban consulate at Vigo, Spain, and that both her parents are regarded by the Cuban Government as being natives of Cuba. In fact, she

herself is regarded by the Cuban Government as being born in Habana, where her parents had their permanent residence. (See exhibit D.)

The alien's exclusion is based on item 4, section 202 (a), chapter I, title II of Public Law 414, which reads: "An alien born within any quota area in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the quota area of either parent."

The alien's father (now deceased) was born in Spain in 1888, while Cuba was still a Spanish colony. He was descended from a family established in Cuba since early in the 18th century. During the colonial period, and afterwards, it was customary for Cubans of means to send expectant mothers to Spain because of the better medical facilities and more temperate climate of the peninsula. At the time of Mr. Gago's birth, there was no distinction between Cuban and Spanish nationality.

This distinction was drawn in the Treaty of Peace of 1898, negotiated directly between Spain and the United States. (See exhibit A.) It was confirmed in the first Cuban Constitution (1901), promulgated and guaranteed by the United States. (See exhibit B.) By the terms of these two documents, the United States recognized as native-born citizens of Cuba all persons residing in Cuba on the date of ratification, except those who specifically expressed allegiance to Spain within a year from that date. Mr. Gago was then a minor; he then had been living continuously in Cuba since he was a few months old, and of course, he retained thereafter his status as a native-born Cuban.

The question of the true nationality of Mr. Gago is based, not on the arbitrary decision of a foreign government, but on the obligations, moral or otherwise, assumed by the United States toward persons residing in Cuba at the time of the drafting of the peace treaty and the promulgation of the first constitution. It was the United States which specified who should or should not be considered native-born Cubans. It is not, therefore, a case of the United States acknowledging the validity of the laws of other countries, but of recognizing the principles which the United States itself enunciated both in the peace treaty and in the subsequent Cuban Constitution. The peculiar status that Cuba holds with respect to the United States is universally acknowledged, even by the Immigration authorities themselves. It has become firmly established as our traditions in our international relations, and leading political figures of the past have voiced the firm conviction that Cuba holds a peculiarly intimate relation to the United States. (See exhibit C.)

This instant case is one of extreme hardship as well as of unusual discrimination. The petitioner has resided in the United States for almost 8 years and has become acclimated to the American environment. All her business and social ties in Cuba have been severed. At the same time, she has the guaranty of employment as resident purchasing agent in New York from a large Havana store provided she obtains permanent residence. Presently she is studying cosmetology and beauty culture to further train herself for this position. Her stay in the United States in no way would deprive an American citizen of employment, inasmuch as the store in question would, in the event of her exclusion, send someone else from its own organization to head the New York purchasing office. Her activities here, on the contrary, would promote the sale of American products.

Inasmuch as Cuba permits any American citizen to engage in such occupations without any requirement or restriction and in fact, there are presently tens of thousands of Americans employed in lucrative positions in that country, it would seem only fair that the same privilege be granted to the petitioner.

It is believed that although the situation in which this alien finds herself is rare, and as time passes will become even more rare, the framers of the Immigration Act would have made special provision for this unusual set of circumstances, had they been aware of the same. Since, however, no such provision has been made, it is not possible for the alien to secure relief other than by special legislation.

It is, therefore, respectfully urged that the bill H. R. 3960 for the relief of the alien, Maria Del Carmen Gago Santana, be approved.

Respectfully submitted,

MARTIN RICHMOND,  
*Attorney for Maria del Carmen Gago Santana.*

## EXHIBIT A

Treaty of peace between the United States and Spain, signed in Paris, December 10, 1898

## ARTICLE I

"Spain relinquishes all claims of sovereignty over and title to Cuba. And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may, under international law, result from the fact of its occupation, for the protection of life and property."

## ARTICLE IX

"Spanish subjects, natives of the peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds, and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners \* \* \*. In case they remain in the territory they may preserve their allegiance to the crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside. The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

## EXHIBIT B

## REPUBLIC OF CUBA

Constitution of Cuba, adopted under the aegis of, and sponsored and guaranteed by the United States, of June 12, 1901:

## TITLE II—CUBANS

Article 5. Cubans by birth are:

1. All persons born of Cuban parents whether within or without the territory of the Republic.
2. All persons born of foreign parents within the territory of the Republic, provided that on becoming of age they apply for inscription, as Cubans, in the proper register.
3. All persons born in foreign countries of parents natives of Cuba who have forfeited their Cuban nationality, provided that on becoming of age they apply for their inscription as Cubans in register aforesaid.

## EXHIBIT C

Excerpts from speeches, treaties and official pronouncements bearing upon the special and privileged position of the United States vis-a-vis the Republic of Cuba

1. On the occasion of the ratification of the reciprocity treaty with Cuba, President Theodore Roosevelt called Congress in special session on November 10, 1903, for the express purpose of having it take the needed action for putting the treaty into operation.

"I deem", said President Roosevelt, "such legislation demanded not only by our interest but by our honor \* \* \*. When the acceptance of the Platt amendment was required from Cuba by the action of the Congress of the United States, this Government thereby definitely committed itself to the policy of treating Cuba as occupying a unique position as regards this country. It was provided that when the island became a free and independent Republic she should stand in such close relations with us as in certain respects to come within our system of inter-



national policy; and it necessarily followed that she must also to a certain degree become included within the lines of our economic policy \* \* \*. We gave her liberty. We are knit to her by the memories of the blood and courage of our soldiers who fought for her in war; by the memory of the wisdom and integrity of our administrators who served her in peace and who started her so well on the difficult path of self-government. We must help her onward and upward; and in helping her we shall help ourselves \* \* \*. A failure to enact such legislation would come perilously near a repudiation of the pledged faith of the Nation."

2. Excerpt from letter of Elihu Root, of March 2, 1901, to Maj. Gen. Leonard Wood:

"The Cubans should understand that the establishment of the relations indicated in these congressional resolutions will put them in a position where there will be felt in the United States a kindness and sense of moral obligation towards them as a people for whom we have in a certain degree made ourselves responsible, and the moral force of that feeling will be immense in compelling the establishment of favorable trade relations \* \* \*."

Upon consideration of all the facts in this case, the committee is of the opinion that H. R. 3960, as amended, should be enacted and accordingly recommends that the bill do pass.



